

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:DOM:IT&A:Br1
JJMcGreevy FREV-110840-97

date: SEP 10 1997

to: Acting National Director, Submission Processing T:S

from: Senior Technician Reviewer, Branch 1 (Income Tax and
Accounting) CC:DOM:IT&A:1

subject Clarification of Opinion Re: IRC 6611(e)(1) and (2)

This is in response to your memorandum dated June 2, 1997, requesting a clarification of our memorandum dated February 12, 1997.

Our February 12, 1997, memorandum addressed whether amended income tax returns, amended non-income tax returns, and IRS-prepared amended returns should be treated as returns for purposes of section 6611(e)(1) of the Internal Revenue Code. The February 12, 1997, memorandum concludes that original returns prepared by the taxpayer and returns prepared by the IRS are "returns" within the meaning of section 6611(e)(1). Any return filed after the original return is an amended return. An amended return that shows an overpayment is a claim within the meaning of section 6611(e)(2).

Your June 2, 1997, memorandum states that the purpose of the original inquiry was not to establish that the original return and the amended return are identical (i.e., "the" return) but that an amended return is "a" return for purposes of computing interest on overpayments. Your memorandum cites the following authorities for concluding that an amended return would qualify as a return.

o Beard v. Commissioner, 82 T.C. 766 (1984), aff'd 793 F.2d 139 (6th Cir. 1986). This opinion holds that for a document to constitute a return for statute of limitations purposes there must be sufficient data to calculate tax liability, the document must purport to be a return, there must be an honest and reasonable attempt to satisfy the requirements of the tax law, and the taxpayer must execute the return under penalties of perjury. Your memorandum notes that an amended return meets this test.

o Section 6213(g)(1) of the Code. This section provides that for the purpose of section 6213, the term "return" includes any amendment or supplement thereto. Section 6213(g)(1) makes clear that the exceptions to the restrictions on assessment

arising out of mathematical or clerical errors will apply to both returns and amended returns.

o Section 6103(b)(1) of the Code. This section provides that the term "return" means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of the Code, which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto. This provision makes clear that the nondisclosure rules apply to claims for refund.

o Section 301.7216-1(b)(1) of the Regulations on Procedure and Administration. This regulation provides that the term "tax return" means any return (or amended return) of income tax. This provision extends the penalty imposed by section 7216(a) to the disclosure or misuse by tax return preparers of information on amended returns.

o Section 301.6109-1(b)(2)(iv). This regulation provides that any foreign person who, with respect to taxes imposed by the Code makes a return of tax, an amended return, or a refund claim must furnish its own taxpayer identification number.

o Rev. Rul. 74-203, 1974-1 C.B. 330. This ruling concludes that an executed Form 870 with accompanying schedules is a return under section 6020(a) and a valid election to file a joint return under section 6013. ~~Under section 6020(a) if any person fails to make a required return but consents to disclose information necessary for its preparation, the Service may prepare such return which, when signed by the taxpayer, may be received as the return of the person.~~

o Section 301.6402-3(a)(5), which states:

A properly executed individual, fiduciary, or corporation original income tax return or an amended return (on 1040X or 1120X if applicable) shall constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return (or amended return)....A return or amended return shall constitute a claim for refund or credit if it contains a statement setting forth the amount determined as an overpayment and advising whether such amount shall be refunded to the taxpayer....

o T.D. 7410, 1976-1 C.B. 384. This Treasury decision amended the regulations under section 6402 to provide that if the taxpayer filed Form 1040, Form 1040A ("U.S. Individual Income Tax Return"), or Form 1120 ("U.S. Corporation Income Tax Return"), then a claim for refund must be made on either Form 1040X ("Amended U.S. Individual Income Tax Return") or Form 1120X ("Amended U.S. Corporation Income Tax return"), whichever is

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The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13271, 107 Stat. 312, 541 (OBRA 1993), amended § 6611(e) by enacting subsections (e)(1), (e)(2), and (e)(3). Section 6611(e)(1) replaces § 6611(e) as the general 45-day rule and extends its application to all taxes imposed by the Code and not just income taxes as was the case prior to OBRA 1993.

Section 6611(e)(1) states:

If any overpayment of tax imposed by this title is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

Section 6611(e)(2) states:

If--

(A) the taxpayer files a claim for a credit or refund for any overpayment of tax imposed by this title, and

(B) such overpayment is refunded within 45 days after such claim is filed,

no interest shall be allowed on such overpayment from the date the claim is filed until the day the refund is made.

The committee report accompanying OBRA 1993 indicates that § 6611(e)(2) is a "parallel rule" that applies to "amended returns and claims for refund" (see H.R. Rep. No. 111, 103d Cong., 1st Sess. 787 (1993)). It is clear from the language of the statute and the committee reports that two rules apply--one to "returns" (§ 6611(e)(1)) and another to "claims" (§ 6611(e)(2)). The committee report indicates that "amended returns" are covered by § 6611(e)(2). This is supported by § 301.6402-3(a) of the regulations, which provides that in the case of an overpayment of income taxes for which a return has been filed, a claim shall be made on the appropriate amended income tax return.

Section 6611(e)(1) permits the IRS to refund an overpayment without interest within 45 days of the due date of the return. Therefore, if an amended return is filed before the due date

(determined without regard to extensions) and the IRS refunds the overpayment shown on the amended return within 45 days of the due date, then no interest is allowable. Section 6611(e)(1) also allows an interest free period if the IRS refunds an overpayment within 45 days after the return is filed. As discussed above, an amended return filed by the due date (including extensions) is considered the return of the taxpayer. Therefore, if the IRS refunds the overpayment shown on an amended return filed by the due date (including extensions) within 45 days then no interest will be allowable. If the overpayment is not refunded within 45 days then interest is allowable from the date the overpayment arose.

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If you have any questions regarding this memorandum or would like to meet to discuss our answers to your questions, please contact John McGreevy on 622-4910.


JOHN M. COULTER, Jr.